

# Is your child transferring to a secondary school with a statement of special needs?

## How do I prepare for my child's transfer to secondary school and when should I start doing this?

Transferring to secondary school is a daunting time for any child. For those children with special educational needs (SEN), the move to secondary school can be even more challenging. In order to best prepare for your child's transition for secondary school, the key is that you start planning as early as possible, the earlier the better! In fact, parents of children with SEN should **start planning for this in year 4**. At this stage, you should be looking into different types of schools to find out what is available and how they could meet your child's needs. We advise that you collect as much information about the provision available as this will put you in a stronger position when it comes to putting forward your choice of school and the reasons for this to the local authority (the LA).



We suggest that you **consider a range of schools** including mainstream schools and special schools to find out what is out there. You will find that LAs will inevitably point you towards schools which they themselves maintain, but if you consider that a school in a different area or an independent school is going to meet your child's special needs better, then you should also investigate these.

You can request a list of local schools from the LA. There are also useful resources on the Internet (for example only: <http://www.schoolswebdirectory.co.uk/>). It can be extremely helpful to ask for prospectuses from schools and arrange to make visits. Many schools will make appointments so that you can visit at any time of the year, while others will hold open days. Some independent special schools will carry out assessments on children before they will offer a place.

## What are the LA's responsibilities?

The LA responsible for maintaining a child's Statement and they must **review it annually**. The Headteacher of your child's school will usually arrange the annual review meeting and sometimes a representative from the LA will attend. Prior to the review meeting the Headteacher must request written **advice from the child's parents**, as well as people specified by the LA, and anyone else the Headteacher considers appropriate. This is your opportunity to put forward your views in preparation for the meeting, as this written advice will form the basis of the discussion. It may also give you an opportunity to find out what schools the LA have in mind for your child and their arguments against the school you are suggesting.

Following the review meeting, the **Headteacher will prepare a report for the LA** which they will then use to review whether the provision in the statement is still appropriate and whether

any changes should be made to the statement. This consideration by the LA is in fact the Annual Review, not the meeting you have attended. Once they have reviewed the statement, the LA will write to you to let you know whether or not they propose to amend the statement. You will then have a right of **appeal to the Special Educational Needs and Disability (SEND) Tribunal** within **2 months of the date of the written decision** against whatever decision they make.

For children who are transferring to secondary education, the LA will normally arrange for an early annual review either in the summer term of year 5 or the autumn term in year 6. This is because, by law, the LA has to issue a **Final Amended Statement** for a child that is due to transfer to secondary school by the **15<sup>th</sup> February** of the year of transfer naming the school in Part 4 that they have allocated for your child. When the LA issues the Final Amended Statement you will receive a right to appeal against the contents of that Statement to the SEND Tribunal **within 2 months** of the date of the covering letter that comes with that Statement. Please be aware that the LA could issue a Final Amended Statement before 15<sup>th</sup> February and, if so, the 2 month time limit to appeal will run from the date of the covering letter.



Because of the tight timescale to deal with appeals if the statement is only issued on 15<sup>th</sup> February, we often advise parents to appeal against any decision taken in the year 5/6 Annual Review, although each case has to be considered on its own merits and much may depend on what evidence you have.

Where an LA fails to issue a Statement by the 15<sup>th</sup> February of the year of transfer they are acting unlawfully and may be challenged by way of a Judicial Review. If this happens, you need to seek legal advice **immediately**.

### **How can I challenge the LA's decision?**

As explained above, if you are dissatisfied with the contents of the Final Amended Statement you can appeal to the Special Educational Needs and Disability Tribunal **within 2 months** of the date of the covering letter that came with the Statement. You receive a right to appeal against Parts 2, 3 and 4 of the Statement. Part 2 is the description of the child's needs, Part 3 is the provision identified to meet those needs and Part 4 is the school placement. You may be happy with the statement issued by the local authority – however in our experience most of them do not contain the level of detail needed to give your child fully protected rights to the provision he or she needs. It could be worth seeking advice on these points.

## Points to bear in mind

### ***What is my child entitled to?***

You need to be aware that the LA are not obliged to provide the **best** education for your child, merely one that is **suitable** to meet the child's needs, and they are obliged to make the best use of their limited financial resources. However, if their school does not have the right provision to deal with your child's special needs, the LA is required to name a school that is more appropriate, even if it costs more. So if the school you want is more expensive to the LA than the one they are proposing, you will need to show that their preferred school will not meet your child's educational needs. This is a complex question as parents may want a school for a range of reasons including questions of respite or social care, or the availability of certain medical procedures, and not all of these can be taken into full account when assessing educational needs. Ultimately, even if you put forward reasons why you consider your chosen school is more suitable to meet your child's needs, the LA may still disagree and name their preference school in Part 4. You would then have to appeal.

### ***What kind of evidence will I need?***

It can be hard to prove that the LA maintained school is not appropriate unless you have **expert evidence** from independent experts showing what your child needs. On many occasions the reports written by the LA educational psychologist or local therapists for speech and language or occupational therapy are simply not detailed enough for these purposes and may reflect the provision which is normally readily available in the area rather than what your child actually needs.

### ***Can I ask for a mainstream school?***

If you want a mainstream school for your child you have the right to ask for this, and a special school can only be ordered if the mainstream placement would not be right for your child even with a high level of adaptation or support, or if placement there would be damaging to the education of other children at the school. You cannot be forced to agree to a special school placement merely because it is cheaper than the mainstream alternative.

### ***What if I want my child to go to a special school?***

Equally, if you want a specialist placement, you have a perfect right to ask for this, but need to be aware that it is likely to be more expensive in many cases than a mainstream school, especially if you are asking for a non-maintained special school, and it is likely therefore that this will be rejected by the LA unless it is absolutely clear that there is no other alternative. The only route in these cases is to show that the school proposed by the local authority is simply not appropriate. In this case, the question of different costs should not be taken into account.

## Get in touch

These notes are of course generalisations and every case is different. If you would like to talk to a specialist adviser on Special Educational Needs Law you can call our **helpline on 0845 388 0108** who can give you an initial view on your own particular case and circumstances.

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